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REVOLUTIONARY CLAIMS.

SPEECH

OF

HON. REUBEN E. FENTON,
OF NEW YORK.

Delivered in the U. S. House of Representatives, May 18, 1860.

Mr. FENTON said :

Mr. SPEAKER: In reference to the bill which I had the honor to submit to the House, "to provide for the settlement of the claims of the officers and soldiers of the Revolutionary army, and the widows and children of those who died in the service," I desire to say that I am constantly in the receipt of letters from all parts of these United States, asking why it is that so much delay has attended the passage of this bill? Will each member of this House aid me to answer? Will each member contribute to relieve me from the arduous duty, by co-operating to hasten final action on the bill?

In my remarks to the House on this subject during the last Congress, I expressed myself very fully in support of the *justice* and *legal rights* of these meritorious creditors, so that very little additional can be said by me to commend them to the approval of Congress, and to incite in the minds of members a desire for their immediate adjustment. It is very little benefit to creditors to have committees investigate and report claims merely to be placed on the Calendar, there to remain until called into like incipient vitality at the next Congress, only to meet like renewed postponement. If they are, as I believe them to be, beyond the shadow of a doubt, DEBTS—legal, meritorious debts—due from the United States to these creditors, they ought to be paid—paid now, paid with the same promptness, with the same appreciation of duty and right, as we ourselves ask to be paid our salary. They claim only \$240 per annum for the services rendered and the sufferings endured by their fathers in the great struggle for independence, whilst we enjoy the Government they established, in possession of the highest honors, and a salary of \$3,000 per annum.

The people of this great nation cherish a love of justice. They are willing to pay liberally—they insist upon paying honorably; and the discharge of duty will ever command their approbation; but they will not be, and they should not be, content, if we manifest indifference to their rights. They will hold us, as they should, to a strict accountability. It is unfortunately true, that individual claims against the Government receive too little attention from the Representatives of the people. They cannot sue the Government; they have no remedy only such as we have the power to furnish; and yet who does not know that they travel up the broad passages to this Hall, year after year, until time grows weary, sad with oft-repeated disappointments, and at last turn away with feeble step, leaving the prosecution of their claims to their children, and oft-times entailed upon their children's children, or abandoned in despair of obtaining justice at the hands of their servants?

The applicants provided for in this bill do not ask us to pay them for the fortunes and many years' service rendered prior to the date of the contracts for half pay. They ask nothing for losses for depreciation of Government paper. They ask nothing for their fortunes, which they expended to acquire this Government. They ask only that we should do an act of justice; that we should discharge a *legal* and *sacred* obligation. They ask the payment of these half-pay debts—

1. Because, by the principles of law and equity, they are positively due.
2. Because they are free from all possible influence of conjecture or uncertainty.
3. Because the amount is unchangeably fixed by a recorded public law.

The payments which have ever been made

on account of the same are all recorded. Nothing is left to conjecture; nothing to unwritten or unrecorded evidence. The payments made towards these sacred contracts in certificates are to be deducted, not at their depreciated value, but for their full amount; and no Congress, it seems to me, can disregard the rights of these creditors. In the very able report of Mr. Burgess, made February 11, 1858, the committee say:

"That, in their opinion, the delivery of those certificates, as well as on general principles as on those which govern courts of law and equity, did not annul the right of half pay, or exonerate the Government from the obligations of the original contract. Such of those officers as had survived the war, and continued in the service until peace, became severally and individually vested with a complete right to the reward of half pay for the residue of their lives. The reward was gallantly won at the point of the sword; it was the price of our independence, purchased with blood, and secured by *public faith*."

In order to remove all objections to the passage of this bill, by reason of the present depletion of the Treasury, it provides that whatever may be found due shall be made payable in United States stocks, at fifteen years, redeemable at the discretion of the United States at any previous time. And notwithstanding a special act of Congress, of June 3, 1784, expressly provides that these creditors should receive interest, that is excluded from this bill.

It will not be forgotten that these parties do not come here to ask us for a pension or to collect the arrears of a pension; but to ask the payment of a legal, meritorious debt—nay, more, a preferred debt. The eighth article of the old Confederation authorized Congress to make contracts to carry on the war, and the twelfth article made all debts thus incurred a charge against the United States, "for the payment and satisfaction whereof the said States and the public faith was solemnly pledged."

It will be seen that the Government had become insolvent, and Congress declared, by act of April 18, 1780, that the certificates which had issued, or which should thereafter issue, should be discharged until further order of Congress, *at the rate of forty dollars for one*; that the officers having sacrificed fortunes as well as five years of service, Congress, in order to guard them, if possible, against loss for their *subsequent services*, by the act of October 3, 1780, promised those officers who should serve to the end of the war, or until discharged, seven years' half pay, in "specie, or current money equivalent;" and eighteen days afterwards Congress extended the act to half pay for life, which, by construction of law, was also payable in the same way. Here, then, is a debt, a special debt, the only obligation of the United States which was made payable in "specie, or current money equivalent." Assuming this great fact, to say nothing of the fortunes which had already been expended by these creditors; who can doubt that those debts were designed to be preferred before all others against the Gov-

ernment? Who can doubt that this was designed to be the first mortgage on the public faith and public domain—*first* in the hearts and memories of that and all succeeding generations? They achieved our independence and established this Government which we now enjoy. The sacrifices which the fathers of these creditors made, and the public domain which they acquired, the United States now hold in trust for their children. *Over one thousand million acres of land* still remain undisposed of. Whilst we seek to commemorate and perpetuate the achievements and memory of their fathers, we withhold from the children that which, in my judgment, is legally, equitably, and justly, their due. If due to the fathers, it is due to their heirs.

It cannot well be denied that these half-pay debts rest on strict, legal, and well-defined principles of law; and no one should hesitate to declare that justice and good faith demand that the United States should pay, or secure without delay, the principal and interest due to those creditors, the great benefactors of our country. Not wishing the House to rely on my expositions, I first recapitulate the laws on which these contracts are founded. Though there may be a difference of opinion as to the legal demands of those creditors, there can be none in the fact that the officers must have sustained losses in the reception of Government money, much more than are *now* claimed for half pay.

It is time to settle the question in this Government, whether there is or can be, under our Constitution and our laws, any vested rights which shall not be subject to be abrogated by Congress; whether, if Congress at one session makes a contract by which a certain sum is to be paid in "specie, or current money equivalent," the next or some subsequent Congress can substitute a new contract in its place, without the individual consent of the party, and pass a law fixing a value to that contract. In the case under consideration, the second contract was made payable *in specie* or securities such as shall be given to other creditors. And again, another act was passed July 4, 1783, directing the Paymaster General to adjust all demands with the officers and soldiers; not to pay in "specie, or current money equivalent," but simply to issue certificates:

Resolved, That the Paymaster General be and he is hereby fully authorized and empowered to settle and finally adjust all accounts whatsoever between the United States and the officers and soldiers of the American army, so as to include all and every demand which they or either of them may have by virtue of the several resolutions and acts of Congress relating thereto, and that the said Paymaster do give certificates (not money or securities) of the sums which may appear due on settlement in the form and manner which the superintendent of the finance of the United States may direct: "

Not described to be such as "should be given to other creditors"—

Provided, always, That the certificates to the officers shall be delayed for a reasonable time, to obtain returns of payment or advances to them by the States or public De-

partments, where, in the opinion of the Paymaster General, such delay shall be necessary."—*Act of July 4, 1783.*

None but invalid officers permitted to return their commutation certificates:

"Resolved, That invalid officers be permitted to return the amount of commutation in other securities of the United States, where they have parted with their own, provided the sum shall be of equal amount, bearing the same interest."—*Act of September 14, 1788.*

But the act did not extend to other officers, and this way connecting the half pay with all other sums due the officers, for which these same class certificates were given. I cannot omit to call the attention of Congress to the fact that the officer of the Government, before its own court, should have found it necessary, in defence of the United States against these just claims, to assign as a reason and inducement on the part of the officer to receive these commutation certificates, that, while Congress made these contracts, they had no power to induce a compliance with them, and say :

"The States at this time were the real sovereigns; Congress was a mere assembly of ambassadors. The army was in the pay of the States; the officers were appointed by them, though commissioned by Congress. Whatever Congress might resolve was of no effect, unless concurred in by the States; and the officers of those States in which the half-pay system was regarded with aversion must have felt that it would be dangerous to brave public sentiment at home, relying upon no other support than that of Congress."

And that this induced the officers to request a commutation. But he also says—

"That the offer of commutation made in the resolution of March 22, 1783, did not, and was not intended, to deprive the officers of the benefits of the resolution of 1780, but was made in order to enable the officers to relieve themselves from the odium which was raised against them in some of the States, as the recipients of pensions from the Federal Government, and as being thus distinguished from the mass of their fellow-citizens."

And, notwithstanding it is conceded that the provisions of this act of March 22 wholly failed, he contends—

"That the acceptance by any officer of the commutation offered by Congress in the resolution of March 22, 1783, was an accord and satisfaction, and, in law, was a full discharge of the promise contained in the resolution of October, 1780."

Now, the facts are, that these certificates were not delivered by any "agreement" of the parties, but were charged to, sent, or delivered to these creditors, in pursuance of the law of July 4, 1783, and by the imperative rules of the Paymaster General. The act referred to, by which all demands against the Government are alleged by the opponents of these claims to be settled, left the Paymaster but one way, and one only, and he adhered to that most rigidly. Neither the justice of these meritorious debts, nor the pressing wants of the officers, could save them from the imperative rules of the Paymaster General, and yet the solicitor endeavors to distort this deliberate wrong, this great exigency of a then impoverished Government, into an arrangement of the creditor. And now, Mr. Speaker, I ask, who, from among the original creditors, shall be preferred? Those who did, or those who did not, receive the commutation certificates? In the case of Dr. Baird,

the Government concurred in recognising the latter class.

Let us suppose one of those officers—say a captain—to whom was due, on account of advances and arrears of pay, say \$5,000, and commutation \$2,400: all was directed to be paid in certificates, worth, at the time, \$740—and the United States could then have purchased them at that price—on which the receiver must sustain a loss of \$6,660; one class of officers give encouragement to Government in its infancy and weakness, by continuing to share in its financial relations; by obeying its laws in the reception of its depreciated paper; trusting to its integrity, in the hope that the security promised and contemplated in the acts of January 25 and March 22, 1783, would still be furnished; and receive these certificates, not only for advances, not only for arrears, but also for commutation—asking nothing now for the loss of the \$6,660; only asking Government to deduct the whole amount paid him, not at its value, but at the face of the certificates, and pay him the balance. Let us now suppose another of equal rank, entitled to the same sum, directed by the act of July 4, 1783, to receive the same amount in those depreciated certificates, and refuses to receive the same, and now appears before Congress, asking his half pay: which of this class, I ask, should be entitled to the highest consideration? Why should not the man who has sustained a loss of \$6,660 be preferred to the man who has sustained no loss; the man who obeyed a positive law of his country, to him who escaped a loss by refusing to obey the law?

I beg to direct your attention to the views expressed by the late Secretary Woodbury, in 1828:

"But they have averred, and it is again repeated, that these officers are seeking a right, and that is a right both on common-law and on chancery principles. But if on only one, whether it be a right on strict common-law principles, or on chancery principles, it is equally a right, and the claim is equally a legal claim. The forum in which it becomes a right does not alter its legality. Hence, if every gentleman would agree with him from Virginia, [Mr. Tyler,] that the statute of limitation should be scorned, and that the pretended payments made to these officers was 'mere wind, mere trash,' I aver that, in any forum, before any court or jury in Christendom, this right, as between individuals, could now be unanswerably established. Let the issue be formed, and the cause tried to-morrow, and no three or five judges, no twelve 'good men and true,' as jurors, could say that the wages of toil and blood, the solemn promises for sacrifices and sufferings, to secure the liberties of America, had ever been discharged by only 'wind and trash.' " * * *

"Without dwelling a moment on considerations before urged in the argument, in favor of the legality of this claim, let me ask, what has been the reply to the position of the committee, that, on strict legal principles, the promise of half pay for life has ever been fulfilled? Has any one shown that the half pay, in the form of bail pay, has ever been paid? No pretence for it. Has any one shown that the half pay has ever been technically released? No pretence for it." * * *

"How, then, has the promise of October, 1780, been fulfilled? In no way, except by the act of commutation. But it could not be fulfilled by that act, unless all things were transacted in conformity to the provisions of that act." * * * Everybody feels, and knows likewise, that the payment to be in conformity to the act, was to have been money, or at least securities equivalent to money, when, in truth, it was neither; and even under the most favorable view, if the certificates were kept till the funding, fell short of what

was due, from one-fourth to one-third, so the certificates, or the payment, should have been made in September, 1783; but were not, in fact, made until some time in 1784-'85, when worth much less. But break through the forms of measures, and every lawyer, every constitutional statesman, must admit that, on strict legal principles, there should not only have been a conformity to the commutation act, but, in the act itself, to make it binding, there should have been a regard to private vested rights."

This, then, was the opinion of an able lawyer and statesman, a most able and honorable judge and representative, a safe and most reliable counsellor. Will you adopt his opinion, or will you examine the laws on which they are founded, and decide for yourselves?

Mr. Speaker, I would call the attention of the House to the fact, that notwithstanding the United States became the assignees of the public domain, and, by the sixth article of the Constitution, became liable for all debts and engagements of the old Confederation, yet the only way in which they attempted to discharge these commutation certificates was by the funding law and a subscription loan by those who held them, by which the holder was to receive only about two-thirds of the amount.

The first consideration named in the contract of September 16, 1776, promised land to the officers and soldiers, or their representatives. And, although this obligation was entered into by the old Confederation, it is equally binding on the present.

The sixth article of the Constitution provides,

"That all debts contracted and engagements entered into before the adoption of this Constitution, shall be as valid against the United States, under this Constitution, as under the Confederation."

ACTS ON WHICH HALF-PAY DEBTS ARE FOUNDED.

1. The act of September 16, 1776:

"Resolved, That, in addition to a money bounty of twenty dollars to each non-commissioned officer and private soldier, Congress make provision for granting lands, in the following proportions, to the officers and soldiers who shall engage in the service, and continue therein to the close of the war, or until discharged by Congress, and to the representatives of such officers and soldiers as shall be slain by the enemy. Such lands to be provided by the United States; and whatever expense shall be necessary to procure such land, the said expense shall be paid and borne by the States, in the same proportion as the other expenses of the war, namely: to a colonel, five hundred acres; to a lieutenant colonel, four hundred and fifty acres; to a major, four hundred acres; to a captain, three hundred acres; to a lieutenant, two hundred acres; to an ensign, one hundred and fifty acres; each non-commissioned officer and soldier, one hundred acres."

2. And Congress afterwards was obliged to add the resolve of May 15, 1778:

"Resolved, unanimously, That all military officers commissioned by Congress, who are now or hereafter may be in the service of the United States, and shall continue therein during the war, and not hold any office of profit under those States, or any of them, shall, after the conclusion of the war, be entitled to receive annually, for the term of seven years, if they live so long, one half of the present pay of such officers: Provided, That no general officer of the cavalry, artillery, or infantry, shall be entitled to receive more than one half part of the pay of a colonel of such corps, respectively."

3. Seven years' half pay, in specie, or current money equivalent:

"Resolved, That the Commander-in-chief and commanding officer in the Southern department direct the officers of each State to meet and agree upon the officers for the regiments to be raised by their respective States, from those who incline to continue in service; and where it cannot be done by

agreement, to be determined by seniority, and make return of those who are to remain; which is to be transmitted to Congress, together with the names of the officers reduced, who are to be allowed half pay for life. That the officers who shall continue in the service to the end of the war shall be entitled to half pay during life, to commence from the time of their reduction."

This last contract was payable in specie, or current money equivalent—made at a time when, by positive law of Congress, the certificates of the Government were to be discharged at the rate of ninety-seven cents discount on every dollar.

4. The act of May 15, 1778, was extended to the widows of those officers who have died or shall hereafter die in the service:

"Resolved, That the resolution of the 15th May, 1778, granting half pay for seven years to the officers of the army who should continue in service to the end of the war, be extended to the widows of those officers who have died or shall hereafter die in the service; to commence from the time of such officer's death, and continue for the term of seven years; or if there be no widow, or in case of her death or intermarriage, the said half pay be given to the orphan children of the officer dying as aforesaid, if he shall have left any."

Congress, August 24, 1780.

5. These acts were reaffirmed and extended by act of December 31, 1781:

6. These claims are again reaffirmed, and made preferred debts, by the resolution of June 3, 1784:

"That an interest of six per cent. per annum shall be allowed to all creditors of the United States, for supplies furnished, or services done, from the time the payment became due."

This extended to all their arrears of pay, long due, as well as to their half pay. Chief Justice Gilchrist, in a recent decision, in alluding to this resolve, says:

"No language could be more express or free from doubt on this point. The resolution was passed, from a feeling that it was just and right that interest should be paid from the time the half pay became due; and it was a voluntary contract on the part of the United States, constituting a legal claim against them, which no subsequent legislation could release without the consent of the other party."

This act not only affirms these obligations to be preferred, and to be still a subsisting contract, but they are further confirmed by the later act—March 8, 1785:

"Resolved, That the officers who retired under the resolve of the 31st December, 1781, are equally entitled to half pay or commutation, with those officers who retired under the resolves of the 3d and 21st October, 1780."

The history and the relations of these creditors with the General Government ought not to be forgotten, in connection with the contract for half pay for life, that the Government was driven from one expedient to another, which the imperative necessities of the moment required, to induce engagements for the war, as will be seen by the following summary:

1. Promising grants of land—September 16, 1776.
2. Seven years' half pay to those who should serve to the end of the war—May 15, 1778.

3. Seven years' half pay, in specie or current money, to the supernumerary officers, to commence January 1, 1781, as also grants of land—October 3, 1780.

4. Not being able to meet the half pay of a single year in specie or current money, they increase the seven years' half pay to half pay during life—October 21, 1780.

5. As peace had been concluded, and the Government were unable to pay the officers their arrears for monthly pay, or to make any provision for their half pay during life, they resorted to another expedient, of promising the offi-

five years' full pay, in specie or securities, with interest, payable annually—March 22, 1783.

"6. Not being able to pay or secure this small amount of their claim, resorted to another desperate expedient, and caused the Paymaster General to issue and send to the officers more of these repudiated certificates, as specie and securities.

"7. Not being able to pay the interest of a single year, repudiate them.

"Finally, resorted to a funding act, by which the new Government propose an arrangement by which there is to be no distinction between the officer who has been charged \$2,400 in commutation, and the person to whom he has sold them at the value fixed by law—for sixty dollars."

What, then, can be said in answer to these claims?

1. It is attempted to be shown that the act of March 22, 1783, promising five years' full pay in specie or security, instead of half pay for life, was passed at the request of the officers. It is conceded that the half-pay debts were never paid as half pay, nor was the act for five years' full pay ever fulfilled, but utterly failed to redeem its engagements. Not only so, this act was wholly dependent on the resolve of January 25, 1783, and the securities contemplated and promised in that act, which became a part of the act of March 22, 1783. For the purpose of correcting the erroneous impressions of the public and Congress in relation to the objects embraced in the request of the few officers referred to, I have felt it my duty to give it in full. It will be seen, by that and the answer of Congress, that the distress of the officers was very great, and that the request involved the anticipation of having all their claims secured, which, in many instances, amounted, for advances and services, to ten times more than the commutation. The manner in which the commutation was to be secured, having been omitted in the act of March 22, and the half-pay debts being payable "in specie or other current money," the United States were bound by all the principles of law to pay in specie or give such security as was contemplated in the act of January 25, 1783. It is admitted by the Government that the act of March 22 did not repeal that of October 21, 1780, and therefore the Paymaster General had no right to charge and force upon the officers those valueless certificates as full pay.

1. Because, by the terms of the act itself, the officers were expressly prohibited from expressing their dissent to the same, *individually*.

2. Because this resolve was not passed until after the peace—after the contract had been fulfilled on the part of the officers.

3. Because it was well known to Congress, at the time of the passage of that act, that the Government had no power to comply with any of the conditions of that act, either to pay said officers in specie or give them security.

The answer of the officers to the resolves of Congress of the 25th of January, 1783, proves conclusively that they were induced to consider the proposition of five years' full pay in connection with the expectation that they would receive an amount of money and have all their other and larger claims, as well as the com-

mutation, made safe "by substantial funds." Therefore we find, that on the 15th of March, 1783, seven-days only previous to the passage of this act, after hearing a most patriotic and thrilling address of General Washington, these officers—

"Resolved, That the unanimous thanks of the officers of the army be presented to his Excellency the Commander-in-chief, for his excellent address, and the communication he has been pleased to make them, and that he be assured that the officers reciprocate his affectionate expressions with the greatest sincerity of which the human mind can be capable."

The address from the army to Congress, the report of the committee from the army, and the resolutions of Congress of the 25th of January, 1783, being read—

"Resolved, unanimously, That the army continue to have an unshaken confidence in the justice of Congress and their country, and are fully convinced that the Representatives of America will not disband or disperse the army until their accounts are liquidated, the balance accurately ascertained, and adequate funds established for payment, and in this arrangement the officers expect that the half-pay, or commutation of it, should be efficaciously compensated."

"Resolved, unanimously, That," &c., &c., "that the proceedings of this day be transmitted by the President to Major McDougal, and that he be requested to continue his solicitations at Congress until the object of his mission had been accomplished."

The States failing to comply with the resolves of January 25, 1783, Congress found it necessary to pass the law of October 18, 1783. On the 18th October, 1783, (4 vol. Journals by Way & Gideon, p. 299,) Congress adopted a proclamation announcing the peace, and that

"In the progress of an arduous and difficult war, the armies of the United States of America have eminently displayed every military and patriotic virtue, and are not less to be applauded for their fortitude and magnanimity, in the most trying scenes of distress, than for a series of heroic and illustrious achievements, which exalt them to a high rank among the most zealous and successful defenders of the rights and liberties of mankind." * * * We therefore, the United States in Congress assembled, thus impressed with a lively sense of the distinguished merit and good conduct of the said armies, do give them the thanks of the country, for their long, eminent, and faithful services; and it is our will and pleasure that such of the Federal armies as stand engaged to serve during the war, and as, by our acts of 26th May, the 11th day of June, the 9th day of August, and the 26th day of September last, were furloughed, shall, from and after the 3d day of November next, be absolutely discharged, by virtue of this our proclamation, from the said service; and we do also declare that the further services in the field of the officers who are discharged and on furlough, in consequence of our aforesaid acts, can now be dispensed with, and they have our full permission to retire from service without being longer liable from their present engagements to be called into command."

By which it is clearly proved, that all the propositions made by Congress to pay the half pay or commutation in specie or securities failed. It is therefore impossible to imagine that these depreciated certificates charged to the officers could in any way impair the half-pay contract. The only question which could possibly arise would be, what amount these creditors should allow for said certificates:

"There is no rule of law more clearly settled or sustained by higher authorities than that,

"An allowance of a portion of a debt as the balance due, and the reception by the creditor, is no bar or compromise of the claim.

"The principle of compromise, by the payment of a less sum, always presumes—

"1. That it is made free from compulsion. *

"2. That there has been no concealment or misrepresentation by the debtor of his pecuniary condition.

"3. That at the time of the receipt of a less sum as a compromise, it must also be presumed that the creditor has the opportunity of enforcing his claim by a court of law."

And it is well known that these creditors were excluded by law from suing the Government until a partial jurisdiction was given to the Court of Claims. The poverty of the old Confederation up to the time of its expiration, and its consequent inability and failure to make provision for payment, or security for payment at some distant time—or even for the payment of interest, which was payable annually—precludes the idea of any assent of the officers to receive these certificates as an accord and satisfaction of the half-pay debt, which was payable in specie or current money equivalent.

In the case of the United States *vs.* Dickson, 15 Peters, p. 162—

"The Supreme Court of the United States say that the construction given to the laws by any department of the Executive Government, is necessarily *ex parte* without the benefit of an opposing argument, in a suit where the very matter is in controversy; and when the construction is once given, there is no opportunity to question or revise it by those who are most interested in it as officers, deriving their salary and emoluments therefrom; for they cannot bring the test by a judicial decision. It is only when they are sued by the Government for some supposed balance, that they can assert their rights. If the tenor of the law be not mandatory of a mere ministerial act to be done, then the head of Department acts according to his discretion, in subordination always to his constitutional and legal relation to the President of the United States."—*Dickson vs. Paulding*, 14 Peters, p. 479.

It may happen that a claim shall arise, which, according to the plain terms of the law, is not within its provisions, or which is not proved by the evidence which the law prescribes, and so is rejected by the Secretary. In such a case, the claimant may apply to Congress, and that body may pass a private law for the relief of the party, dispensing with its own condition of applicability, or its prescribed rules of evidence. But no such dispensing power resides in the Secretary.

It was settled to be no bar, even where Congress, in the act allowing it, declared it to be for the half pay for life. (Case of Thomas H. Baird.)

The declarations of those who were contemporaneous with the events of the early days of our Republic, and who voted for the act of March 22, 1783, prove that these certificates were accepted with reluctance, or forced upon them.

Mr. Smith, of Maryland, contended that none of the Maryland line ever expressed their consent to the act of 1783:

"They, therefore, could never, in fact, have come under the provisions of the commutation law. It was true, that when they came home from service they found that the law had passed, and that they must take the commutation or nothing. The alternative was, to take it or starve, and it was not unnatural to suppose that they chose the former. This was the case with the whole Maryland line."—*Debates in Congress*, 1827-'28, vol. 4, part 1.

"Mr. Madison, who was in Congress in 1783, and voted 'ay' on the passage of the commutation resolution, says, in the course of the debate referred to, in 1790, was this depreciated paper (commutation certificates) freely accepted? No. The Government offered that or nothing. The relation of the

individual to the Government, and the circumstances of the offer, rendered the acceptance a forced one, not a free one. The same degree of constraint would vitiate a transaction between man and man before any court of equity on the face of the earth." * * * "Here, then, is a debt acknowledged to have been due, and which was never discharged, because the payment was forced and defective."—*Annals of Congress*, vol. 1, pp. 1236, 1308.

"Colonel Hartley, who was an officer in the late army, says, also, that these certificates were not accepted by the soldiers willingly as an equivalent for their services, but Congress forced them to accept of them as the only alternative."—*Ibid.*, p. 1209.

The utmost that the United States can, of right and in honor, ask of these creditors is, to be allowed the full amount of these certificates towards the half pay contract.

It appears to me that the sacrifice on these certificates, for the large amount of arrears of pay and supplies furnished, due these officers, is quite sufficient, without an attempt on the part of the Government to sacrifice the rights of the officers, vested under these contracts for half pay.

Mr. Speaker, before proceeding to the last point involved in the discussion of this question, I will be allowed to refer to the action of the Thirty-fourth Congress, in confirmation of the opinion of the court, delivered by the late able and much-lamented Chief Justice Gilchrist, in the case of Thomas H. Baird, administrator of Absalom Baird, who was a surgeon in the Revolutionary army, and in which this question of accord and satisfaction seems to have been conclusively settled.

In that case, Congress, in 1836, directed that he should be paid his five years' full pay, which is declared in the act to be his commutation or half pay. In 1837, he again applied for the interest, and this claim was, in 1855, referred to the Court of Claims, and the Chief Justice, Gilchrist, in delivering the opinion of the court, says:

"The proceedings in relation to the claim for commutation do not appear to be very material in relation to the case in the present position. On the 23d of March, 1783, a resolution was passed, providing that the officers and others entitled to half pay for life 'shall be entitled to receive, at the end of the war, their five years' full pay, in lieu of half pay for life, in money—that is, specie—or in securities on interest, as Congress shall find most convenient.' On the 28th of January, 1794, Dr. Baird applied for the benefit of this provision, but died in the year 1806—having, as is said in the report of the Committee of Claims of the 5th of February, 1855, 'became wearied and disheartened with delay.' In the year 1818, his son, Thomas II. Baird, having become of age, petitioned Congress for relief; and on the 3d of March, 1855, the committee reported that 'Dr. Absalom Baird was entitled to the benefit of the act of the 17th of January, 1783, extending the grant of half pay for life to the officers of the hospital department and medical staff.' No action was had upon the resolution until the 22d of June, 1836, when an act was passed granting five years full pay as commutation, under the resolution of 1783, but *without interest*.

"Now, this claim does not depend for its validity upon any admission contained in the act of 1836. But the Congress which passed that act must have considered that Dr. Baird had a legal claim of some kind; otherwise, their conduct, in granting him five years' full pay, was wholly indefensible. It is, however, relied upon as a final settlement of the claim. Upon any principle known to the law, this position is wholly untenable. It is easy enough to declare, *ex cathedra*, that it was a final settlement. But it is extremely difficult to imagine, in the absence of all evidence, what reasons can be urged for holding that the payment of a sum of money is of itself a discharge of a debt for a larger amount. A plea of payment of a small sum in satisfaction of a larger, is bad,

even after verdict. (2 Parsons on Contracts, 130, and notes.) This principle is familiar to every lawyer. A debt may be paid by a fair and well-understood compromise, carried faithfully into effect. But here there was no compromise. If it were a case between individuals, no one would dream of applying such a term to it. The United States are either bound by principles of law applicable to them, or they are not so bound. If they are not bound, there is an end of the discussion—for then all reasoning is fruitless. If they are bound by the principles of law, it is impossible to regard the payment of five years' full pay, without interest, as a satisfaction of this claim. There is no evidence that either party so regarded it; and, unless we set at defiance every principle of law, we cannot hold that one party to a contract, without the consent of the other, can discharge his debt by the payment of a smaller sum than the amount due." * * * "The amount of Dr. Baird's half pay was \$240 per annum, payable at the end of every year. He was entitled to this sum up to the 27th day of October, 1865, the day of his death, *and interest* on the payments as they became due, according to the express provisions of the resolutions of June 3, 1784."

This bill, reported by the Court of Claims, passed Congress, and was approved on the 18th day of August, 1856. This act of Congress was a public declaration and legal construction of this contract, and not only the rights of *one* or the joint and several payees of the same obligation, under which all the others claim half pay for life, but each and all the others are equally and justly entitled to the same relief. Aside from this decision of the court, confirmed by Congress, by no principle of construction known to law or equity can it be said that the promise for half pay has ever been fulfilled, either by the old or the new Confederation.

These certificates, it is conceded, were never paid, but were funded by the holders under the funding law of August 4, 1790. Few, if any, at that time, were in the hands of the officers; they had parted with them at their usual value, from five to twelve and a half cents on the dollar; and those who had funded them received, in the course of thirty years, some two-thirds of their amount. But as this act extended only to negotiable paper, it could not embrace the half-pay contracts; and the ninth section expressly declares:

"That nothing in this act contained shall be construed in any wise to alter, abridge, or impair the rights of those creditors of the United States who shall not subscribe to the said loan, or the contracts upon which their respective claims are founded; but the contracts and rights shall remain in full force and virtue."

These sections of the funding act in fact declare a final separation of these certificates from the contracts for half pay. The twenty-second section of the funding act of August 4, 1790, provides:

"That the proceeds of the sales which shall be made of lands in the Western territory now belonging, or that may hereafter belong, to the United States, shall be, and are hereby, appropriated towards sinking or discharging the debts for the payment whereof the United States now are, or by virtue of this act may be, holden, and shall be applied solely to that use, until the said debts shall be fully satisfied."

These creditors, therefore, urge, that they are asking for the creation of a debt, but, as debtors, they are seeking the payment of debts long since due, through their own funds in the Government hands as a sacred

These men conquered by their valor red by their patriotism the lands to the

States, and the States ceded them to the United States, to be applied to that use until the said debts were fully satisfied. No final settlement of these claims could have been presumed until the patent of the land had issued. (Story on Contracts, chap. 23, pp. 16 and 17; Minor vs. Bradley, 22 Pick'g, 459.) Until that time the officers were merely the factors or bailees of the Government, as such, for said certificates. The party receiving a bill or note is bound strictly to the performance of all the duties of holder or endorser, as the case may be; and until payment is due, his right to sue upon the original claim is suspended. So it was with the officers; the right to sue the United States has been, ever since the judiciary act of 1789, not only suspended, but positively prohibited. (See Story on Contracts, 579, chap. I, p. 1083.) Upon the dishonor of the bill or note, the original rights of the creditor revive, and are the same as if the bill or note had never been given.

The payees of the half-pay contract were joint as well as several, and the promise or any law which affected one would extend to each and all the others.

They were presented by the admission and restoration of the claim to all the survivors of the joint and several obligees of the half-pay contract under the act of May 15, 1828, which restored the right of all the joint and several obligees who were deceased. Congress, by successive acts, passed at intervals from two to five years, continued to authorize the issuing of military land warrants to the officers and soldiers of the continental lines, whose claims for bounty land remained unsatisfied—the last of which acts of extension was passed February 8, 1854, which extended the time for discharging this portion of the contract up to the 26th of June, 1858.

All these claims for half pay for life were again opened, and they were presented by the joint resolution of the Senate of January 16, 1828, wherein it is required that all those who had not received the land warrants to which they were entitled should receive the same. The acts granting bounty land of September 16 and 18, 1776, strictly extended only to those who served to the end of the war. Justice to the memory of those who served many years, instead of fourteen days, who gained our liberties and established this Government, entitles them to have their names handed down to their children and future time by the records of the Government, at least in grants of land. This bill, however, confines the extension of the said act to those only whose claim shall be established by record evidence of service, or by the rule of the second section of the act of May 14, 1856; and in case there be more than one child surviving, each shall be entitled to eighty acres, instead of one hundred and sixty acres.

In conclusion, Mr. Speaker, I have only to say, that in these investigations, requiring

much persevering labor, which has its only reward in the consciousness of the justice and honor of the claims and the thanks of the claimants, it is gratifying to know that I am advocating no new scheme of public expenditure, no doubtful claim on the Treasury, no excessive payment, but a proposition full of justice and honor, and equity, and truth; and which had the support of Mr. Madison, in 1783; Mr. Nelson, in 1810; Mr. Johnson, in 1818; Mr. Sergeant, December 10, 1819; Mr. Hemp-hill, January 3, 1826; Mr. Burgess, May 8, 1826, and February 11, 1828; the act of May 15, 1828; Senator Walker's report in 1852; Senator Evans's, February 4, 1854; and Mr. Broom, April 4, 1856; and their arguments and reports show a repeated recognition of the contract on the part of Congress, but no general provision appears to have been made by Congress for the relief of these officers until the act of May 15, 1828, in which the contract of 1780 is fully recognised.

The committee to whom I referred this bill early in the present session, therefore, instructed me to report it back without amendment, and recommend its passage. It allows half pay for life to the officers from the close of the Revolution to the date of their death, deducting therefrom all sums which have ever been paid to them by the Government by way of commutation or as pay, under the act of May 15, 1828. For the purpose of extending to the surviving children of the soldiers of the Revolution the benefits of the act of March 3, 1855, a section has been inserted for that purpose. The act referred to was doubtless intended to embrace their claims, but the word "minor" excludes them, as there are no "minor children" of the Revolution; and hence the necessity of further

legislation in behalf of these meritorious claimants.

The words of Washington in relation to these claims are as applicable to us as to the old Confederacy:

"The path of our duty," said he, "is plain before us; honesty will be found, on every experiment, to be the best and only true policy. Let us, then, as a nation, be just; let us fulfil the public contracts which Congress had undoubtedly a right to make, for the purpose of carrying on the war, with the same good faith we suppose ourselves bound to perform private engagements."

"In this state of absolute freedom and perfect security, who will grudge to yield a very little of his property to support the common interest of society, and to insure the protection of Government? Who does not remember the frequent declarations, at the commencement of the war, that we should be completely satisfied, if, at the expense of one half, we could defend the remainder of our possessions?

"Where is the man to be found who wishes to remain indebted for the defence of his own person and property to the exertions, the bravery, and the blood of others, without making the generous effort to pay the debt of honor and gratitude? In what part of the continent shall we find a man, or body of men, who would not blush to stand up and propose measures purposely calculated to rob the soldier of his stipend, and the public creditor of his due? And were it possible that such a flagrant instance of injustice could ever happen, would it not excite the general indignation, and tend to bring down upon the authors of such measures the aggravated vengeance of Heaven?

"As to the idea which I am informed has in some instances prevailed, that half pay and commutation are to be regarded merely in the odious light of a pension, it ought to be exploded forever.

"That provision should be viewed as it really was, a reasonable compensation offered by Congress, at a time when they had nothing else to give, to officers of the army for services then to be performed.

"It was the only means to prevent a total dereliction of the service; it was a part of their hire.

"I may be allowed to say it was the price of their blood and your independence."

It was more than a common debt; it is a debt of honor; it can never be considered as a pension or gratuity, nor cancelled until it is fairly discharged.

WASHINGTON, D. C.

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